Court No. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 21-D of 2004

1. State of Uttaranchal through Collector, Dehradun,
2. Tehri Hydro Development Corporation, Tehri Garhwal,

… **Appellants.**

Versus

Radhey Shyam, S/O Shri Indra Singh
R/O Village Dehrakhas, District Dehradun.

…. **Respondents.**

S. Bhupender Singh, Standing Counsel for the appellant no.1.
Sri U.K. Uniyal, Addl. Advocate General, for the appellant no.2.
Sri Ashok Aggarwal, Advocate, for the respondent.

Date September 28, 2004

Hon. P.C. Verma, J.
Hon. B.S. Verma, J.

This appeal has been preferred against the judgment and decree dated 20.10.2003 passed by the Additional District Judge, V F.T.C. Dehradun, in Land Acquisition Case No. 83 of 1992, Radhe Shyam Vs. Collector and another, whereby the learned Reference Court awarded compensation @ Rs. 4,95,000/- per acre along with interest, solatium etc. for the land under acquisition.

Along with the appeal, application for condonation of delay supported by an affidavit of the Incharge S.L.A.O., Irrigation Division, Tehri Garhwal has been field, alleging therein that the judgment and decree under appeal was passed by the court below on 20.10.2003 and the limitation for filing the appeal expired on 5-2-2004 including the period spent in obtaining the certified copy of the decree. According to the appellants, application for certified copy of the judgment and decree was applied on 31.10.203 and the certified copy of the judgment was obtained on 4-11-2003 while that of the decree was obtained on 15-12-2003 and the matter was referred to the State Government for obtaining sanction. The State Government granted sanction for filing the appeal vide letter dated 13-1-2004, which was stated to have been received in the office on 3-2-2004.

Thereafter the matter was referred for sanction of funds towards court fee, etc. vide letter dated 21-2-2004. It is further alleged that the High Court was closed due to vacations till 15-2-2004. It is also alleged that letter dated 4-3-2004 was sent by the Executive Engineer concerned to the Special Land Acquisition Officer for grant of funds and the amount was made available on 3-6-2004. The appeal was ultimately filed on 28-6-2004.

Learned Standing Counsel appearing on behalf of the appellants submitted that the delay caused in filing the appeal was beyond the control of the appellants and there was no deliberate intention on its part.

We have perused the entire material and have considered the submissions made on behalf of the State for condonation of delay. It is true that in official business some time is involved in completing the formalities particularly in obtaining sanction and to that extent the delay in filing the appeal may be considered to be justified, but in this case, the sanction from the Government was granted as early as on 13-1-2004 and even if the assertion of the appellant is believed that the sanction was received in its office on 3-2-2004 only, there was no reason why efforts were not made to obtain necessary funds by the close of the same financial year, i.e. between 3-2-2004 and 31-3-2004. Moreover, deficiency in court fee could have been made good after presentation of the appeal, with the leave of the Court. The contention of the appellant that delay has been caused for non-availability of funds is not sustainable. It is the admitted case of the appellants that the sanction for funds was given on 21-02-2004, i.e. within the financial year 2003-2004 itself, but no efforts were made to utilize the funds by the close of the year on 31st March, 2004. The appellants has failed to show sufficient and reasonable cause for condonation of delay, therefore, in our opinion there is no good ground to condone the delay.

Accordingly, the application for condonation of delay is rejected. The appeal is dismissed as barred by limitation.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP